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IN THE

Supreme Court of the United States

October Term, 1967

No. 906

ROVICO, INC.,

Petitioner,

against

AMERICAN PHOTOCOPY EQUIPMENT COMPANY,

Respondent.

MOTION FOR LEAVE TO RENEW PETITION FOR REHEARING

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MOTION FOR LEAVE TO RENEW PETITION FOR REHEARING

To: The Honorable Chief Justice and the Honorable Associate Justices of the Supreme Court of the United States:

Petitioner Rovico Inc. respectfully moves this Honorable Court:

(a) For leave to renew its Petition for Rehearing of the Petition for Writ of Certiorari; and

(b) For leave to argue the appeal, if the Petition for Certiorari is granted, concurrently with the argument of the appeal in *Zenith Radio Corporation* v. *Hazeltine Research, Inc.*, No. 1266, October Term, 1967, certiorari granted May 27, 1968.

On April 22, 1968, this Court granted Petitioner's Motion for Leave to Supplement Petition for Rehearing,

and concurrently denied the Petition, U. S. , 88 S. Ct. 1404.

The Motion to Supplement the Petition for Rehearing was based on the *filing* of a Petition for Certiorari in *Zenith*. The present Motion is based on the *granting* of the *Zenith* Petition for Certiorari.

As shown in Petitioner's Motion to Supplement its Petition for Rehearing, there are common antitrust questions in the present *Rovico* case and in *Zenith* (expansion of the patent monopoly by exacting patent royalties from unpatented devices in violation of the antitrust laws) and the same interpretation by the Seventh Circuit Court of Appeals of the same decision of this Court (*Automatic Radio Mfg. Co.* v. *Hazeltine Research,* 339 U. S. 827, 70 S. Ct. 894, 1950).

The present *Rovico* case and the *Zenith* case ran parallel courses in the same District Court in Illinois and in the Seventh Circuit Court of Appeals. In both cases, one of the key questions was whether the leverage of a patent may lawfully be used to exact patent royalties from unpatented devices. In both cases, this question was decided by the Seventh Circuit in the affirmative on the authority of *Automatic* and related *Hazeltine* cases. This parallel course of the *Zenith* and *Rovico* cases continued into this very Court. As an illustration, we quote the following argument from Respondent's Brief in Opposition to Petition for Writ of Certiorari (pp. 8-9):

> "Its [Respondent's] licensing practice is far more innocuous than that which this Court approved in *Automatic Radio Mfg.* v. *Hazeltine Research,* 339 U. S. 827, 834 (1950), where the licensee was required to pay royalties computed as a percentage of its entire sales of television receivers, whether

> patented or not. This undoubtedly resulted in payment of royalty on some wholly unpatented units. And it is quite significant that this Court expressly distinguished such royalty provisions from the illegal extension of monopoly proscribed by *Mercoid.*"

Parallel excerpts from the decisions of the District Court and Seventh Circuit Court of Appeals in *Zenith* and in the present *Rovico* case are quoted in the Appendix to the Supplemental Petition for Rehearing of the Petition for Writ of Certiorari herein.

The granting of the *Zenith* Petition for Certiorari is believed to constitute a finding by this Court that the antitrust questions raised therein are of great public importance. Since identical antitrust questions are raised in the *Rovico* Petition for Certiorari, it is respectfully submitted that the same finding of public importance applies to *Rovico.*

If this Court should reverse the Seventh Circuit on its interpretation in *Zenith* of this Court's decision in *Automatic,* and if this Court should hold in *Zenith* that the leverage of a patent may not lawfully be used to exact royalties from unpatented devices, these determinations should also be made in the present *Rovico* case. It would appear highly inequitable and unjust, and in derogation of the principle of "Equal Justice Under Law", to let the Seventh Circuit decision stand in *Rovico* while reviewing and possibly reversing it in *Zenith.*

It is respectfully urged that this Motion be granted, that the *Rovico* Petition for Rehearing of its Petition for

Writ of Certiorari be granted, and that the appeal herein be set down for argument concurrently with the argument of the appeal in *Zenith*.

Dated: New York, New York
May 29, 1968

Respectfully submitted,

SAMUEL J. STOLL,
Attorney for Petitioner

Of Counsel:

ROBERT S. STOLL.
SIDNEY WALLENSTEIN,

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 906

ROVICO, INC.,

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against

AMERICAN PHOTOCOPY EQUIPMENT COMPANY,

Respondent.

Affidavit in Support of Petitioner's Motion for Leave to Renew Petition for Rehearing, and Certificate of Counsel

State of New York
County of New York—ss.:

SAMUEL J. STOLL, being duly sworn, deposes and says:

1. I am a member of the Bar of this Court and I am the attorney for Rovico, Inc., Petitioner herein. I respectfully submit this affidavit in support of Petitioner's annexed Motion for Leave to Renew Petition for Rehearing of this Petition for Writ of Certiorari.

2. On April 22, 1968, this Court granted Petitioner's Motion for Leave to Supplement its Petition for Rehearing and concurrently therewith denied the Petition,

U. S. , 88 S. Ct. 1404. The Petition, as supplemented, was based on the *filing* on March 26, 1968 of a Petition for Writ of Certiorari in *Zenith Radio Corporation* v. *Hazeltine Research, Inc.,* No. 1266, October Term, 1967. The present Motion is brought in view of the *granting* of the *Zenith* Petition for Certiorari.

3. As appears in the annexed Motion to Renew and in the prior Motion for Leave to Supplement the Petition for Rehearing, there are common questions in the present *Rovico* case and in *Zenith* of antitrust law and the same interpretation by the Seventh Circuit Court of Appeals of the same decision of this Court in *Automatic Radio Mfg. Co.* v. *Hazeltine Research, Inc.,* 339 U. S. 827, 70 S. Ct. 894 (1950).

4. Granting of the Petition for Certiorari in *Zenith* is believed to be a finding that the questions presented therein are of great public importance. Since the same questions (some, not all) are also presented in the present case, the finding of public importance in *Zenith* should equally apply to the present case.

5. This case has now twice been before this Court (on the original Petition for Certiorari and on Rehearing) and it is hoped that the Court will accept the assurance of the undersigned that this third appearance is not lightly made. Petitioner has exerted every effort to resolve the present controversy between the parties without further litigation, but without success, and the action is still pending.

6. It is accordingly certified by the undersigned attorney for Petitioner, that the present Motion is made in good faith, and not for purposes of delay of legal pro-

ceedings in the Courts below. It is believed that there is every justification, legal and equitable, for the present Motion and it is respectfully urged that it be granted, together with the Petitions for Rehearing and Certiorari.

7. In the event that the Motion to Renew and the Petitions for Rehearing and Certiorari are granted, it is respectfully suggested, pursuant to Rule 43(5) of the Rules of this Court, that the appeal be set down for argument concurrently with the argument of the appeal in *Zenith*.

SAMUEL J. STOLL

Sworn to before me this
29th day of May, 1968

ROBERT S. STOLL
Notary Public, State of New York
No. 31-3858715 New York County
Term Expires March 30, 1969